

***** Act 97 of 1981 THIS ACT IS REPEALED BY ACT 300 OF 2002 EFFECTIVE JANUARY 1, 2010

MICHIGAN MUNICIPAL DISTRIBUTABLE AID BOND ACT

Act 97 of 1981

AN ACT to permit the state to approve and make eligible for participation under this act local bonds or other obligations upon application of a county, city, village, township, or charter township; to prescribe the powers and duties of certain state agencies; to provide for the application of certain state shared revenues for payment on distributable aid obligations; and to prescribe certain other matters relating to the bonds and other obligations and state shared revenues.

History: 1981, Act 97, Imd. Eff. July 15, 1981.

The People of the State of Michigan enact:

***** 141.1021 THIS SECTION IS REPEALED BY ACT 300 OF 2002 EFFECTIVE JANUARY 1, 2010

141.1021 Short title.

Sec. 1. This act shall be known and may be cited as the "Michigan municipal distributable aid bond act".

History: 1981, Act 97, Imd. Eff. July 15, 1981.

***** 141.1022 THIS SECTION IS REPEALED BY ACT 300 OF 2002 EFFECTIVE JANUARY 1, 2010

141.1022 Definitions.

Sec. 2. As used in this act:

(a) "Commission" means the municipal finance commission created under the municipal finance act, Act No. 202 of the Public Acts of 1943, as amended, being sections 131.1 to 139.3 of the Michigan Compiled Laws, or its successor agency.

(b) "Debt service" means payments of principal and interest or other required amounts upon distributable aid obligations.

(c) "Director" means the director of the commission before July 1, 1984, and the state treasurer on and after July 1, 1984.

(d) "Distributable aid" means state shared revenues provided for in the state revenue sharing act of 1971, Act No. 140 of the Public Acts of 1971, as amended, being sections 141.901 to 141.921 of the Michigan Compiled Laws, the single business tax act, Act No. 228 of the Public Acts of 1975, as amended, being sections 208.1 to 208.145 of the Michigan Compiled Laws, any other law providing for distribution of state shared revenues which are derived from the same taxes distributed under Act No. 140 of the Public Acts of 1971, as amended, and Act No. 228 of the Public Acts of 1975, as amended, and any law providing reimbursement to a municipality under the state constitution of 1963 as reimbursement for revenue which would otherwise be collected from taxes imposed by the municipality.

(e) "Distributable aid obligations" means obligations of a municipality eligible to participate under this act.

(f) "Governing body" means the board of commissioners of a county; the township board of a township or charter township; the council, common council, or commission of a city; the council, commission, or board of trustees of a village; and in any other governmental authority or agency, the officials or official body who are given general governing powers.

(g) "Municipality" means a county, city, village, township, or charter township within the state which is eligible to receive distributable aid and which is authorized by law or charter to issue general obligation bonds or other instruments of indebtedness.

(h) "Municipality's financial officer" means the chief fiscal officer of a municipality.

(i) "Obligations" means general obligation bonds or notes of a municipality including bonds, notes, or other debt instruments which are secured, primarily or secondarily, by the full faith and credit of the municipality and on which the last installment of principal becomes due not less than 2 years after the date of issuance. Obligations described in this subdivision, including obligations issued prior to July 15, 1981 if so determined by the governing body, may be payable from taxes levied without rate or amount limitations or from taxes levied subject to constitutional, statutory, or charter limitations.

(j) "Paying agent" means a state or nationally chartered bank, or state or federally chartered savings and loan association, or a municipal or state officer named in distributable aid obligations as the agent for the

paying of the principal and interest and who is qualified by law to act as a paying agent.

History: 1981, Act 97, Imd. Eff. July 15, 1981;—Am. 1983, Act 77, Imd. Eff. June 6, 1983.

***** 141.1023 THIS SECTION IS REPEALED BY ACT 300 OF 2002 EFFECTIVE JANUARY 1, 2010

141.1023 Application by governing body to make obligations eligible to participate under act; resolution; investigation; annual audit; independent auditor; filing copies with state treasurer; failure to file report or appoint independent auditor.

Sec. 3. (1) Whenever the governing body determines, in accordance with law, to incur or issue obligations, or determines that it is required by law to incur an obligation or that it is necessary or desirable in connection with obligations issued prior to the effective date of this act, to make those prior issued obligations eligible to participate under this act, or both, the municipality's financial officer with the approval by resolution of the governing body may file an application and a certified copy of the resolution with the commission to make the obligations eligible to participate under this act, except for obligations issued under the fiscal stabilization act for which the municipality's financial officer shall file an application and a certified copy of the resolution, issued by the municipality pursuant to the fiscal stabilization act, with the commission to make the obligations eligible to participate under this act.

(2) Upon the receipt of the application, the director shall make an investigation to determine if the obligations meet the requirements for participation under this act. The commission shall certify, by order, the eligibility of the obligations if it is satisfied that the obligations meet the requirements for eligibility under this act.

(3) The municipality's financial officer shall annually file an annual final independent audit with the state treasurer when distributable aid obligations are outstanding. The municipality shall appoint an independent auditor not later than 15 days before the close of the fiscal year to be audited. The audit shall be in accordance with the accounting methods of Act No. 2 of the Public Acts of 1968, as amended, being sections 141.421 to 141.440a of the Michigan Compiled Laws, and shall completely set forth the financial operations of the municipality for the fiscal year audited. The audit required by this subsection shall be filed not more than 30 days after its completion by the independent auditor. Failure to file the report shall not affect the validity of the eligibility of the obligation for participating under this act.

(4) The independent auditor appointed pursuant to subsection (3) shall file copies of the audit performed pursuant to subsection (3) with the state treasurer not more than 30 days after its completion.

(5) If a municipality fails to appoint an independent auditor as required by subsection (3), the state treasurer shall appoint an independent auditor to perform the audit required by subsection (3). The state treasurer shall deduct the cost of the audit from the next installment or installments of distributable aid payable to the municipality which is not required to meet the requirements of section 6.

History: 1981, Act 97, Imd. Eff. July 15, 1981.

***** 141.1024 THIS SECTION IS REPEALED BY ACT 300 OF 2002 EFFECTIVE JANUARY 1, 2010

141.1024 Distributable aid obligations; recital of eligibility; contents; qualification of obligations.

Sec. 4. Distributable aid obligations shall, when issued, contain a recital that they are eligible to participate under this act and that the holder of the distributable aid obligation is entitled to the benefits of this act. The recital shall state that the distributable aid obligation is not an indebtedness or general obligation of this state within the meaning of a constitutional debt limitation of this state. The recital shall state that the obligation of this state for payment of principal and interest is only as provided in this act. Except as provided by law, obligations shall be qualified only in the manner provided by this act.

History: 1981, Act 97, Imd. Eff. July 15, 1981.

***** 141.1025 THIS SECTION IS REPEALED BY ACT 300 OF 2002 EFFECTIVE JANUARY 1, 2010

141.1025 Eligibility for participation; requirements; use of proceeds.

Sec. 5. To be eligible to participate under this act:

(a) The maximum debt service on the obligations for which eligibility is sought, together with the debt service on all outstanding distributable aid obligations of the same municipality and any other pledges by the same municipality of distributable aid payable in any fiscal year, shall not exceed 50% of the average annual

distributable aid received by that municipality in the 36 months preceding the date the application for eligibility is filed.

(b) Notwithstanding subdivision (a), if as a result of a change or changes in the distribution formula of all or a portion of the components of distributable aid or a change or changes in the components of distributable aid, the total amount of distributable aid to be received by a municipality will be increased or decreased, the maximum debt service on the obligations for which eligibility is sought, together with the debt service on all outstanding distributable aid obligations of the same municipality and any other pledges by the same municipality of distributable aid payable in any fiscal year, shall not exceed 50% of the estimated average annual distributable aid that would have been received by that municipality in the 36 months preceding the date the application for eligibility is filed if the changes were in effect in those years. However, the total increased maximum level of debt service on all the obligations described in the immediately preceding sentence shall not exceed 75% of the average annual distributable aid actually received by that municipality in the 36 months preceding the date the application for eligibility is filed.

(3) The proceeds of the obligations for which eligibility is sought shall be designated for any lawful use, including the funding of deficits under the fiscal stabilization act.

History: 1981, Act 97, Imd. Eff. July 15, 1981.

***** 141.1026 THIS SECTION IS REPEALED BY ACT 300 OF 2002 EFFECTIVE JANUARY 1, 2010

141.1026 Notice to state treasurer by finance officer of municipality; contents; attachment; supplemental notice; retention of distributable aid by state treasurer; investment income; funds kept with trustee; payment to trustee; payment to municipality; change of trustee; taxes; principal and interest; installment; payment to paying agent; reserve; money in trust; pooling and investment of money; lien; exemption; nonpayment by municipality; reduction of payment.

Sec. 6. (1) The finance officer of a municipality issuing distributable aid obligations shall notify in writing the state treasurer of the date, original principal amount, designation, name and address of the paying agent, and the amounts and payment dates of each installment of principal and interest on each issue of distributable aid obligations not more than 10 days after delivery of each issue of distributable aid obligations and with respect to distributable aid obligations issued prior to the effective date of this act, within 10 days after the issuance of the order by the commission as provided by section 3(2). A certified copy of the proceedings of the governing body authorizing the distributable aid obligations or determining to make obligations issued before the effective date of this act eligible to participate under this act shall be attached to the notice required by this subsection. When the amount of principal or interest on distributable aid obligations is altered, the municipality's finance officer shall give a supplemental notice in writing to the state treasurer setting forth the revised dates of payment and the amounts of each installment of principal and interest on the distributable aid obligations.

(2) The state treasurer shall retain all distributable aid of a municipality having outstanding distributable aid obligations and shall not pay that distributable aid to the municipality until the amount so retained, together with other funds held by the state treasurer for the payment of principal and interest on all distributable aid obligations of the municipality, shall be equal to the amount required to be set aside in the proceedings of the governing body authorizing the distributable aid obligations or in the proceedings of the governing body determining to make obligations issued before the effective date of this act eligible to participate under this act. When the state treasurer has on deposit distributable aid or other funds of the municipality from time to time equal to the amount required to be set aside on all distributable aid obligations of the municipality, the state treasurer shall promptly pay all money in excess thereof to the municipality and thereafter shall pay to the municipality all distributable aid thereafter payable to the municipality. All income derived from investment of money of a municipality held by the state treasurer pursuant to this act from distributable aid shall be credited to the account of the municipality and shall be paid to the municipality when the next payment is made by the state treasurer to the municipality. All income derived from the investment of other money shall be deemed to be payments made on account of debt service by the municipality.

(3) A municipality issuing distributable aid obligations may determine in the proceedings authorizing the distributable aid obligations that funds for the payment of a distributable aid obligation should be kept with a trustee for the benefit of bondholders. If a municipality so determines, then the notice provided for in subsection (1) shall advise the state treasurer of that fact and of the name of the trustee and a copy of the notice required by subsection (1) shall also be served on the trustee not more than 10 days after the delivery of

each issue of distributable aid obligations and, with respect to distributable aid obligations issued before the effective date of this act, within 10 days after the issuance of the order by the commission as provided by section 3(2). Upon receipt of the notification required by this subsection, the state treasurer shall thereafter pay all distributable aid of a municipality having distributable aid obligations to the trustee until the state treasurer is notified in writing by the trustee that the trustee has on deposit sufficient funds to pay the amount required to be set aside in the proceedings of the governing body authorizing the distributable aid obligations or in the proceedings of the governing body determining to make obligations issued before the effective date of this act eligible to participate under this act. When the trustee has on deposit distributable aid so paid or other funds of the municipality from time to time equal to the amount required to be set aside on all distributable aid obligations of the municipality, the trustee shall promptly pay all money in excess thereof to the municipality and shall notify the state treasurer in writing of that fact. The state treasurer thereafter shall then pay to the municipality all distributable aid payable to the municipality. All income derived from investment of money held by a trustee pursuant to this act from distributable aid shall be credited to the account of the municipality and shall be paid to the municipality when the next payment is made by the trustee to the municipality. All income derived from the investment of other money shall be deemed to be payments made on account of debt service by the municipality. Where a municipality determines to keep funds under this act with a trustee, the trustee shall be the trustee for all distributable aid obligations of that municipality and the state treasurer shall not act under subsection (2) for that municipality. The municipality may from time to time change the trustee so designated.

(4) A municipality having distributable aid obligations shall annually levy and collect taxes or otherwise provide money sufficient to pay the principal and interest on its distributable aid obligations. A municipality shall pay to the state treasurer or the trustee, if provided for, an amount equal to each installment of principal or principal and interest not less than 5 days before the due date of the installment.

(5) The state treasurer or trustee shall pay to the paying agent not later than each interest or principal and interest payment date an amount sufficient to pay the interest and principal due on that date on each issue of distributable aid obligations of the municipality, but only from money held by the state treasurer or trustee pursuant to this act, including but not limited to, money provided from distributable aid of the municipality.

(6) Upon delivery of an issue of qualified obligations, the municipality may deposit from the proceeds of the qualified obligations or from other sources a sum of money to be held by the state treasurer as a reserve for the payment of the principal or interest on an issue of qualified obligations as shall be specified by the municipality.

(7) The state treasurer and trustee shall promptly notify the municipality's finance officer of the amount and purpose of each payment made to a paying agent and the state treasurer shall promptly notify the municipality of the amount of distributable aid withheld from the municipality and held by the state treasurer or paid to the trustee and the date of the withholding or payment.

(8) The state treasurer or a trustee shall hold the money received under this act in trust for the payment of principal and interest on distributable aid obligations in a separate account for each municipality. The state treasurer or the trustee may pool money held for 1 or more municipalities under this act and invest that money in any investment permitted by law for municipalities. The distributable aid and money paid to the state treasurer, a trustee, or a paying agent shall be subject to a lien, which is hereby made a statutory lien paramount and superior to all other liens, except as provided in this act, for the sole purpose of paying the principal of, and interest on, distributable aid obligations. The distributable aid and other money held by the state treasurer, the trustee, or a paying agent under this act shall be exempt from being levied upon, taken, sequestered, or applied toward paying the debts or liabilities of the municipality other than for payment of debt service on the distributable aid obligations to which they apply and the holders of the distributable aid obligations shall have a first lien on the distributable aid or other money for the purpose of paying principal and interest on the distributable aid obligations.

(9) If any distributable aid obligation is not paid by the paying agent of the municipality when due, the distributable aid obligation may be presented to and shall be paid by the state treasurer, if the distributable aid is available and is due and not paid to the trustee or the municipality. If such a payment is made by the state treasurer, the next amount of distributable aid paid by the state treasurer to the trustee or the municipality shall be reduced by the same amount of the payment.

History: 1981, Act 97, Imd. Eff. July 15, 1981.

***** 141.1027 THIS SECTION IS REPEALED BY ACT 300 OF 2002 EFFECTIVE JANUARY 1, 2010

141.1027 Covenants by state; construction of act.

Sec. 7. The state of Michigan covenants with the purchasers, holders, owners, and their assigns, beneficiaries, executors, and administrators, of distributable aid obligations that it will not repeal, revoke, rescind, modify, or amend sections 5 and 6 so as to create a lien or charge on or pledge, assignment, diversion, withholding, payment, or other use or deduction from any distributable aid or other amounts provided in this act, which is prior in time or superior in right to the payment required by section 5 or 6 except as provided in section 10. This act shall not be construed to:

(a) Create or constitute state indebtedness.

(b) Require the state to continue to impose and collect taxes from which distributable aid is paid or to make payments of distributable aid.

(c) Limit or prohibit the state from repealing or amending any law enacted for imposition of taxes from which distributable aid is paid or for the payment or apportionment of distributable aid or the manner, time, or the amount of distributable aid.

History: 1981, Act 97, Imd. Eff. July 15, 1981.

***** 141.1028 THIS SECTION IS REPEALED BY ACT 300 OF 2002 EFFECTIVE JANUARY 1, 2010

141.1028 Certifying average annual amount of distributable aid paid to municipality; changes to distribution formula or in components of distributable aid; order by commission and certification as conclusive of distributable aid obligation.

Sec. 8. (1) The state treasurer shall certify the average annual amount of distributable aid paid to a municipality for the 36 months preceding the date the application for a distributable aid loan is filed.

(2) If a change or changes are made to the distribution formula of all or a portion of the components of distributable aid or a change or changes are made in the components of distributable aid, the state treasurer shall provide the commission with estimates of distributable aid that would have been received during the last 36 months preceding the date the application for eligibility of the obligations is filed if the changes were in effect for those months.

(3) The order by the commission required by section 3(2) and the certification described in subsection (1) shall be fully conclusive from the time of issuance of the distributable aid obligation irrespective of an irregularity, omission, or failure to comply with any provision of this act. A person is estopped from denying that distributable aid obligations are entitled to the benefits of the provisions of this act.

History: 1981, Act 97, Imd. Eff. July 15, 1981.

***** 141.1029 THIS SECTION IS REPEALED BY ACT 300 OF 2002 EFFECTIVE JANUARY 1, 2010

141.1029 Construction of act.

Sec. 9. This act shall not be construed to relieve a municipality of the duties imposed on it by law to appropriate and to include in its annual tax levy amounts necessary to pay, in each year, the principal and interest or other required payments maturing and becoming due on distributable aid obligations. This act shall not be construed to prohibit a municipality from applying for authorization to issue or incur distributable aid obligations pursuant to the terms of this act in connection with the construction, reconstruction, development, extension, improvement, or acquisition of any capital improvement, or property, notwithstanding that the construction, reconstruction, development, extension, improvement, or acquisition, was authorized, approved, or commenced prior to the effective date of this act.

History: 1981, Act 97, Imd. Eff. July 15, 1981.

***** 141.1030 THIS SECTION IS REPEALED BY ACT 300 OF 2002 EFFECTIVE JANUARY 1, 2010

141.1030 Pledge and lien on distributable aid.

Sec. 10. (1) The pledge and lien on distributable aid created by this act in favor of the holder of a distributable aid obligation may be on a parity with any pledge or application of distributable aid as security for obligations of a municipality under a contract or proceedings authorized by law after July 14, 1981 permitting the pledge or application of distributable aid regardless of whether that contract or proceedings are subsequently declared invalid, illegal, unenforceable, disaffirmed, or otherwise terminated in whole or in part. However, any obligations to be incurred on a parity basis shall meet the requirements for participation eligibility under section 5, and the distributable aid respecting these obligations shall be paid, retained, or otherwise treated in accordance with section 6, and these obligations shall be entitled to all the benefits of this

act.

(2) The pledge and lien on distributable aid created by this act in favor of the holder of a distributable aid obligation shall be superior to a pledge or lien on the distributable aid created by 1957 PA 185, MCL 123.731 to 123.786; the drain code of 1956, 1956 PA 40, MCL 280.1 to 280.630; and the county public improvement act of 1939, 1939 PA 342, MCL 46.171 to 46.188. The pledge and lien on distributable aid created by this act in favor of the holders of distributable aid obligations shall be superior to a pledge or lien on the distributable aid created after July 15, 1981, under 1955 PA 233, MCL 124.281 to 124.294; and the municipal finance act, 1943 PA 202, MCL 131.1 to 139.3, or any other law.

(3) A municipality may pledge and assign distributable aid for other obligations of the municipality authorized by law after July 14, 1981. However, the maximum debt service on these other outstanding obligations, together with the maximum debt service on outstanding distributable aid obligations in any fiscal year, shall not exceed the amount permitted under section 5 of this act.

(4) The restrictions prescribed by this act do not apply to obligations secured by either of the following:

(a) A pledge of distributable aid pursuant to statutory authorization that expressly permits a general pledge of distributable aid subject only to constitutional limitation.

(b) A pledge of distributable aid pursuant to statutory authorization that expressly excludes the pledge or the obligation from the provisions of this act.

(5) Beginning March 1, 2002, a municipality shall not issue or refund an obligation under this act.

History: 1981, Act 97, Imd. Eff. July 15, 1981;—Am. 1987, Act 281, Eff. Apr. 11, 1988;—Am. 2002, Act 300, Imd. Eff. May 9, 2002.